IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7002 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

VANRAJSINH GAMBHIRSINH

Appearance:

MS NANDINI JOSHI, AGP for Petitioner

MRS DT SHAH for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 14/08/2002

ORAL JUDGEMENT

1. The State of Gujarat has challenged the award made by the Presiding Officer, Labour Court, Surendranagar on 2nd March 1991 directing the appellant to reinstate the respondent as a daily wager with 50% of backwages.

2. The dispute before the Labour Court was whether

the respondent had voluntarily abandoned the work from 23-10-1986, or whether his employment as a daily wager came to be terminated on that day without giving him retrenchment notice. According to the claimant, he was working as a daily wager for two years and his employment was terminated without giving any notice on 23-10-1986, while according to the petitioner, he had voluntarily gone away from 23-10-1986. One of the contentions taken up before the Labour Court by the petitioner was that the daily wager's work was a seasonal work and could be given only when water was released from the dam.

3. The learned counsel appearing for the petitioner submitted that, in view of the decision of the Supreme Court in Himanshu Kumar Vidyarthi v. State of Bihar, reported in AIR 1997 SC 3657, a disengagement from service of the respondent cannot be construed to be a retrenchment under the Industrial Disputes Act, 1947. It was submitted that, as per the deposition of the officer of the petitioner at exh.20, it is only when water was released from the dam that the work in the "kukda" farm was available. He has stated that the respondent was not disengaged from service as per the record and, that he had worked upto 23-10-1986. He also stated that if the respondent wanted to work as a daily wager, he would be given such work. He admitted that new daily wagers were taken up after disengagement of the respondent.

4. The Supreme Court has, in Himanshu Kumar Vidyarthi's case (supra), in the context of the daily wage employees appointed as drivers and peons in the Co-operative Training Institute by its principal, held that every Department of the Government cannot be treated to be an "industry", and that when the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. It was held that the daily wagers were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work, and that they were temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act, and that the concept of "retrenchment" cannot be stretched to such an extent as to cover these employees. It was held that since they were only daily-wage employees and had no right to the posts, their disengagement was not arbitrary.

4.1 On the basis of the ratio of the decision of Hon'ble the Supreme Court in Himanshu Kumar Vidyarthi (supra), it would be clear that a daily wager would have

no right to the post. However, in the present case, on the admission of the petitioner's officer, after disengagement of the respondent, new daily wagers have been taken up and this aspect has rightly weighed with the Labour Court.

5. The question whether the activity of the State Government in running an agricultural farm was a non-commercial government function, was considered by the Division Bench of this Court in Special Civil Application No. 12633 of 1993, and by the judgement and order dated 24-11-1993, it was held that the said activity of the State and its Directorate of Agriculture was a systematic activity of economic nature with a view to produce and supply goods and services to satisfy the human wants, and that there was, therefore, no substance in the contention that running of the farm by the Government was not an "industry". As this question is now concluded by the decision of the Division Bench of this Court, the contentions to the contrary raised on behalf of the petitioner cannot be accepted.

6. There is also no substance in the contention that the respondent had abandoned the work on 23-10-1986 for the simple reason that, in the deposition of the respondent at exh.18, no such suggestion was made in his cross-examination by the petitioner, though he had in the examination in-chief in terms asserted that his services were terminated on 23-10-1986.

6.1 There is also no dispute about the fact that no notice of termination was given to the respondent and it appears from the record that there is no warrant for inferring that he had abandoned his work. Admittedly, he was not given any notice in context of the alleged abandonment of work. The petitioner's officer in his deposition had stated that the daily wager's work would be offered to the respondent if he reports. The respondent has admittedly been working as a daily wager ever since the decision of the Labour Court.

6.2 It has been admitted by the petitioner's officer that, after the petitioner ceased to work, other daily wagers were engaged. Under the provisions of section 25-H of the Industrial Disputes act, 1947, it has been laid down that, where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workmen who offer themselves for re-employment

shall have preference over other persons. The respondent was therefore rightly ordered to be reinstated as a daily wager since after him new persons were allowed to work as daily wagers.

7. In view of the above facts, the impugned decision does not call for any interference particularly when others were engaged after disengaging the respondent. The respondent is only ordered to be reinstated as a daily wager, which means whenever the work is available, he would be given the work as a daily wager without any right to the post. There is no error committed by the Labour Court in exercise of its jurisdiction while directing the reinstatement of the respondent.

8. As regards the backwages, it will be seen that the respondent was only working in his father's farm during the interregnum period and was not gainfully employed anywhere else. The Labour Court has, however, awarded only 50% of the backwages which order does not call for any interference by this Court. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

AUGUST 14, 2002 [R.K.ABICHANDANI, J.]
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